

House Study Bill 180 - Introduced

SENATE/HOUSE FILE _____
BY (PROPOSED SECRETARY OF
STATE BILL)

A BILL FOR

1 An Act relating to the powers and duties of the secretary of
2 state, including requirements for persons filing certain
3 documents or records with the office of secretary of state,
4 the use of certain fees associated with business filings,
5 and the unauthorized filing of commercial records, and
6 providing penalties.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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DIVISION I
PARTNERSHIPS

Section 1. Section 486A.1201, subsection 9, Code 2017, is amended to read as follows:

9. The document shall be delivered to the office of the secretary of state for filing and shall be accompanied by the correct filing fee as provided in section 486A.1202.

Sec. 2. NEW SECTION. **486A.1201A Forms.**

The secretary of state may produce and publish a form for any document required to be filed under this chapter, including as described in section 486A.1201. The secretary of state may adopt rules requiring the mandatory use of the form.

Sec. 3. Section 486A.1202, Code 2017, is amended by adding the following new subsection:

NEW SUBSECTION. 1A. Any amount in excess of the correct filing fee shall be returned to the filing party except the secretary of state may retain up to twenty dollars which shall be considered repayment receipts under section 8.2.

Sec. 4. Section 486A.1205, Code 2017, is amended by adding the following new subsection:

NEW SUBSECTION. 1A. The secretary of state shall refuse to file a document that is not prepared using a mandatory form as required pursuant to section 486A.1201A.

DIVISION II
LIMITED PARTNERSHIPS

Sec. 5. Section 488.102, subsection 19, Code 2017, is amended to read as follows:

19. *"Registered office"* ~~means:~~
~~a. With respect to a limited partnership,~~ means the office that ~~the~~ a limited partnership or foreign limited partnership is required to designate and maintain under section 488.114.
~~b. With respect to a foreign limited partnership, its principal office.~~

Sec. 6. Section 488.114, Code 2017, is amended to read as follows:

1 **488.114 Registered office and registered agent for service**
2 **of process.**

3 1. A limited partnership or foreign limited partnership
4 shall designate and continuously maintain in this state ~~both~~
5 all of the following:

6 a. A registered office, which need not be a place of its
7 activity in this state.

8 b. A registered agent for service of process.

9 ~~2. A foreign limited partnership shall designate and~~
10 ~~continuously maintain in this state a registered agent for~~
11 ~~service of process.~~

12 ~~3.~~ 2. A registered agent for service of process of a
13 limited partnership or foreign limited partnership must be an
14 individual who is a resident of Iowa or other person authorized
15 to do business in this state.

16 Sec. 7. Section 488.116, subsection 3, Code 2017, is amended
17 to read as follows:

18 3. A registered ~~agency~~ agent for service of process is
19 terminated on the date on which the statement of resignation
20 was filed with the secretary of state.

21 Sec. 8. Section 488.206, subsection 1, unnumbered paragraph
22 1, Code 2017, is amended to read as follows:

23 A record authorized or required to be delivered to the
24 secretary of state for filing under this chapter must be
25 captioned to describe the record's purpose, contain the
26 information required by this chapter but may include other
27 information as well, and be in a medium permitted by the
28 secretary of state. The ~~document~~ record must be in English,
29 and typewritten or printed. If the ~~document~~ record is
30 electronically transmitted, it must be in a format that can
31 be retrieved or reproduced in typewritten or printed form.
32 The ~~document~~ record must be delivered to the office of the
33 secretary of state for filing. Delivery may be made by
34 electronic transmission if and to the extent permitted by
35 the secretary of state. The secretary of state may adopt

1 rules for the electronic filing of ~~documents~~ a record and the
2 certification of an electronically filed ~~documents~~ record. If
3 ~~it~~ a record is filed in typewritten or printed form and not
4 transmitted electronically, the secretary of state may require
5 an exact or conformed copy to be delivered with the ~~document~~
6 record. Unless the secretary of state determines that a record
7 does not comply with the filing requirements of this chapter,
8 and if all filing fees have been paid, the secretary of state
9 shall file the record and perform all of the following:

10 Sec. 9. Section 488.206, Code 2017, is amended by adding the
11 following new subsection:

12 NEW SUBSECTION. 1A. The secretary of state shall refuse to
13 file a record that is not prepared using a mandatory form as
14 required pursuant to section 488.206A.

15 Sec. 10. Section 488.206, subsections 4 and 5, Code 2017,
16 are amended to read as follows:

17 4. If the secretary of state refuses to file a ~~document~~
18 record, the secretary of state shall return it to the
19 limited partnership or foreign limited partnership or its
20 representative, together with a brief, written explanation of
21 the reason for the refusal.

22 5. The secretary of state's duty to file ~~documents~~ a record
23 under this section is ministerial. Filing or refusing to file
24 a ~~document~~ record does not do any of the following:

25 *a.* Affect the validity or invalidity of the ~~document~~ record
26 in whole or part.

27 *b.* Relate to the correctness or incorrectness of information
28 contained in the ~~document~~ record.

29 *c.* Create a presumption that the ~~document~~ record is valid or
30 invalid or that information contained in the ~~document~~ record
31 is correct or incorrect.

32 Sec. 11. NEW SECTION. **488.206A Forms.**

33 The secretary of state may produce and publish a form for any
34 record required to be filed under this chapter, including as
35 described in section 488.206. The secretary of state may adopt

1 rules requiring the mandatory use of the form.

2 Sec. 12. Section 488.906, subsection 2, unnumbered
3 paragraph 1, Code 2017, is amended to read as follows:

4 In order to revoke a certificate of authority, the secretary
5 of state must prepare, sign, and file a notice of revocation
6 and send a copy to the foreign limited partnership's registered
7 agent for service of process in this state, or if the foreign
8 limited partnership does not appoint and maintain a proper
9 registered agent in this state, to the foreign limited
10 partnership's ~~registered~~ principal office. The notice must
11 state all of the following:

12 Sec. 13. Section 488.1206, subsection 1, unnumbered
13 paragraph 1, Code 2017, is amended to read as follows:

14 The secretary of state shall collect the following fees
15 when the ~~documents~~ records described in this subsection are
16 delivered to the ~~secretary's~~ office of the secretary of state
17 for filing:

18 Sec. 14. Section 488.1206, subsection 1, paragraph p, Code
19 2017, is amended to read as follows:

20 p. Any other ~~document~~ record required or
21 permitted to be filed \$ 5

22 Sec. 15. Section 488.1206, Code 2017, is amended by adding
23 the following new subsection:

24 NEW SUBSECTION. 1A. Any amount in excess of the correct
25 filing fee shall be returned to the filing party except the
26 secretary of state may retain up to twenty dollars which shall
27 be considered repayment receipts under section 8.2.

28 Sec. 16. Section 488.1206, subsection 3, unnumbered
29 paragraph 1, Code 2017, is amended to read as follows:

30 The secretary of state shall collect the following fees
31 for copying and certifying the copy of any filed ~~document~~
32 record relating to a limited partnership or foreign limited
33 partnership:

34 DIVISION III
35 LIMITED LIABILITY COMPANIES

1 Sec. 17. Section 489.117, subsection 1, unnumbered
2 paragraph 1, Code 2017, is amended to read as follows:

3 The secretary of state shall collect the following fees when
4 ~~documents~~ records described in this subsection are delivered to
5 the ~~secretary's~~ office of the secretary of state for filing:

6 Sec. 18. Section 489.117, Code 2017, is amended by adding
7 the following new subsection:

8 NEW SUBSECTION. 1A. Any amount in excess of the correct
9 filing fee shall be returned to the filing party except the
10 secretary of state may retain up to twenty dollars which shall
11 be considered repayment receipts under section 8.2.

12 Sec. 19. Section 489.117, subsection 3, unnumbered
13 paragraph 1, Code 2017, is amended to read as follows:

14 The secretary of state shall collect the following fees for
15 copying and certifying the copy of any filed ~~document~~ record
16 relating to a domestic or foreign limited liability company:

17 Sec. 20. Section 489.205, Code 2017, is amended by adding
18 the following new subsections:

19 NEW SUBSECTION. 1A. The secretary of state shall refuse to
20 file a record that is not prepared using a mandatory form as
21 required pursuant to section 489.205A.

22 NEW SUBSECTION. 4. The secretary of state may adopt rules
23 for the electronic filing of records and the certification of
24 electronically filed records.

25 Sec. 21. NEW SECTION. **489.205A Forms.**

26 The secretary of state may produce and publish a form for a
27 record required to be filed under this chapter, including as
28 described in section 489.205. The secretary of state may adopt
29 rules requiring the mandatory use of the form.

30 Sec. 22. Section 489.208, subsection 2, paragraph e, Code
31 2017, is amended to read as follows:

32 e. One of the following:

33 (1) If it is a domestic limited liability company, that a
34 statement of dissolution or statement of termination has not
35 been filed.

1 (2) If it is a foreign limited liability company, that its
2 certificate of authority has not been revoked or a notice of
3 cancellation has not been filed.

4 Sec. 23. Section 489.1103, Code 2017, is amended to read as
5 follows:

6 **489.1103 Name.**

7 The name of a professional limited liability company, the
8 name of a foreign professional limited liability company or
9 its name as modified for use in this state, and any fictitious
10 name or trade name adopted by a professional limited liability
11 company or foreign professional limited liability company shall
12 contain the words "Professional Limited Company", "professional
13 limited company", "Professional Limited Liability Company",
14 "professional limited liability company", or the abbreviation
15 "P.L.C.", "PLC", "P.L.L.C.", or "PLLC", and except for the
16 addition of such words or abbreviation, shall be a name
17 which could lawfully be used by a licensed individual or by a
18 partnership of licensed individuals in the practice in this
19 state of a profession which the professional limited liability
20 company is authorized to practice. Each regulating board may
21 by rule adopt additional requirements as to the corporate names
22 and fictitious or trade names of professional limited liability
23 companies and foreign professional limited liability companies
24 which are authorized to practice a profession which is within
25 the jurisdiction of the regulating board.

26 DIVISION IV

27 BUSINESS CORPORATIONS

28 Sec. 24. NEW SECTION. **490.120A Forms.**

29 1. The secretary of state may produce and publish a form for
30 any document required to be filed under this chapter, including
31 as described in section 490.120. The secretary of state may
32 adopt rules requiring the mandatory use of the form.

33 2. This section does not authorize the secretary of state to
34 produce and publish a form for articles of incorporation.

35 Sec. 25. Section 490.122, Code 2017, is amended by adding

1 the following new subsection:

2 NEW SUBSECTION. 1A. Any amount in excess of the correct
3 filing fee shall be returned to the filing party except the
4 secretary of state may retain up to twenty dollars which shall
5 be considered repayment receipts under section 8.2.

6 Sec. 26. Section 490.125, Code 2017, is amended by adding
7 the following new subsection:

8 NEW SUBSECTION. 1A. The secretary of state shall refuse to
9 file a document that is not prepared using a mandatory form as
10 required pursuant to section 490.120A.

11 Sec. 27. REPEAL. Section 490.121, Code 2017, is repealed.

12 DIVISION V

13 CORPORATIONS FOR PECUNIARY PROFIT

14 Sec. 28. Section 491.20, subsection 1, Code 2017, is amended
15 to read as follows:

16 1. a. Amendments to articles of incorporation making
17 changes in any of the provisions of the articles may be made
18 at any annual meeting of the stockholders or special meeting
19 called for that purpose, and they shall be valid only when
20 approved by the shareholders and filed with the secretary of
21 state. If no increase is made in the amount of capital stock,
22 a certificate fee of one dollar and a recording fee of fifty
23 cents per page must be paid. Where capital stock is increased
24 the certificate fee shall be omitted but there shall be paid a
25 recording fee of fifty cents per page and in addition a filing
26 fee which in case of corporations existing for a period of
27 years shall be one dollar per thousand of such increase and
28 in case of corporations empowered to exist perpetually shall
29 be one dollar and ten cents per thousand of such increase.
30 Corporations providing for perpetual existence by amendment to
31 its articles shall, at the time of filing such amendment, pay
32 to the secretary of state a fee of one hundred dollars together
33 with a recording fee of fifty cents per page, and, for all
34 authorized capital stock in excess of ten thousand dollars, an
35 additional fee of one dollar ten cents per thousand.

1 b. Any amount in excess of the correct filing fee shall be
2 returned to the filing party except the secretary of state may
3 retain up to twenty dollars which shall be considered repayment
4 receipts under section 8.2.

5 Sec. 29. Section 491.23, Code 2017, is amended to read as
6 follows:

7 **491.23 Dissolution — filing a statement with secretary of**
8 **state.**

9 A corporation may be dissolved prior to the period fixed
10 in the articles of incorporation, by unanimous consent, or in
11 accordance with the provisions of its articles, if a statement
12 swearing to the dissolution, signed by the officers of such
13 corporation, is filed with the secretary of state. A fee of
14 one dollar shall apply to the filing of the statement. Any
15 amount in excess of the correct filing fee shall be returned to
16 the filing party except the secretary of state shall retain up
17 to twenty dollars which shall be considered repayment receipts
18 under section 8.2.

19 Sec. 30. Section 491.28, Code 2017, is amended to read as
20 follows:

21 **491.28 Filing with secretary of state — fees — certificate**
22 **of renewal.**

23 1. Upon filing with the secretary of state the said
24 certificate and articles of incorporation, and upon the payment
25 to the secretary of state of the fees prescribed by section
26 491.11 for newly organized corporations, the secretary of
27 state shall issue a proper certificate for the renewal of the
28 corporation.

29 2. Whenever, after timely notice has been received that
30 its articles of incorporation will expire and the corporate
31 existence of any corporation has expired and not been renewed
32 within the period prescribed by statute, said corporation
33 thereafter files with the secretary of state amended and
34 substituted articles of incorporation for the purpose of
35 renewing and extending its corporate existence, the secretary

1 of state shall cause said corporation to file satisfactory
2 proof that no judgments against said corporation or the
3 stockholders thereof are outstanding which may be liens against
4 said corporation and that there is no pending litigation
5 involving said corporation or the corporate existence of said
6 corporation. Upon the filing of said proof the secretary
7 of state may acknowledge and file for record the amended
8 and substituted articles of said corporation and issue a
9 certificate of renewal upon the payment of the renewal fees
10 required by statute, however, the secretary of state shall
11 charge and collect an additional ten percent of said renewal
12 fees for each month or major fraction thereof said corporation
13 was delinquent in renewal of its corporate existence as a
14 penalty, but in no instance shall such additional delinquency
15 fee be less than one hundred dollars and not more than one
16 thousand dollars. Said certificate of renewal when issued
17 shall have the same force and effect as though issued upon
18 proper and timely application by said corporation and it
19 shall date from the expiration of the corporate period which
20 it succeeds. Any amount in excess of the correct filing fee
21 shall be returned to the filing party except the secretary of
22 state may retain up to twenty dollars which shall be considered
23 repayment receipts under section 8.2.

24 Sec. 31. NEW SECTION. **491.28A Forms.**

25 The secretary of state may produce and publish a form for any
26 document required to be filed under this chapter, including as
27 described in section 491.20, 491.23, or 491.28. The secretary
28 of state may adopt rules requiring the mandatory use of the
29 form. The secretary of state shall refuse to file a document
30 that is not prepared using a mandatory form.

31 DIVISION VI

32 PROFESSIONAL CORPORATIONS

33 Sec. 32. Section 496C.3, Code 2017, is amended to read as
34 follows:

35 **496C.3 Applicability of Iowa business corporation Act.**

1 The Iowa business corporation Act, **chapter 490**, shall
2 be construed as part of **this chapter** and shall apply to
3 professional corporations, including, but not limited to,
4 their organization, documents and reports, forms, fees and
5 disposition of overpayments, authority, powers, rights, and
6 the regulation and conduct of their affairs. The provisions
7 of the Iowa business corporation Act, **chapter 490**, on foreign
8 corporations shall apply to foreign professional corporations.
9 The provisions of **this chapter** shall prevail over any
10 inconsistent provisions of the Iowa business corporation Act,
11 chapter 490, or any other law.

12 DIVISION VII

13 TRADITIONAL COOPERATIVES

14 Sec. 33. Section 499.2, Code 2017, is amended by adding the
15 following new subsection:

16 NEW SUBSECTION. 5A. "*Document*" means information that
17 is inscribed on a tangible medium or that is stored in an
18 electronic or other medium and is retrievable in perceivable
19 form.

20 Sec. 34. Section 499.44, Code 2017, is amended by adding the
21 following new subsections:

22 NEW SUBSECTION. 1A. The secretary of state shall refuse to
23 file a document that is not prepared using a mandatory form as
24 required pursuant to section 499.44A.

25 NEW SUBSECTION. 6. The secretary of state may adopt rules
26 for the electronic filing of documents and the certification of
27 electronically filed documents.

28 Sec. 35. NEW SECTION. **499.44A Forms.**

29 The secretary of state may produce and publish a form for any
30 document required to be filed under this chapter, including as
31 described in section 499.44. The secretary of state may adopt
32 rules requiring the mandatory use of the form.

33 Sec. 36. Section 499.45, Code 2017, is amended to read as
34 follows:

35 **499.45 Fees.**

1 1. A fee of twenty dollars shall be paid to the secretary
2 of state upon filing articles of incorporation, amendments, or
3 renewals.

4 2. Except as provided in [this section](#), the association
5 shall pay ~~the fees and the secretary of state shall provide for~~
6 the disposition of an overpayment of fees as prescribed by in
7 [section 490.122](#) when the documents described in that section
8 are delivered to the office of the secretary of state for
9 filing.

10 Sec. 37. Section 499.54, Code 2017, is amended to read as
11 follows:

12 **499.54 Foreign associations corporations admitted to do**
13 **business in this state.**

14 1. Any foreign corporation organized under generally
15 similar laws of any other state shall be admitted to do
16 business in ~~Iowa~~ this state upon compliance with the general
17 laws relating to foreign corporations and payment of the same
18 fees as would be required under [section 490.122](#) if the foreign
19 cooperative corporation is a foreign corporation for profit
20 seeking authority to transact business in Iowa under chapter
21 490. Upon the secretary of state being satisfied that the
22 foreign corporation is so organized and has so complied, the
23 secretary shall issue a certificate authorizing the foreign
24 corporation to do business in Iowa.

25 2. ~~Such a~~ A foreign corporation thus admitted shall be
26 entitled to all remedies provided in [this chapter](#), and to
27 enforce all contracts theretofore or thereafter made by the
28 foreign corporation which any association might make under this
29 chapter.

30 3. If such a foreign corporation amends its articles of
31 incorporation it shall forthwith file a copy of the amendment
32 with the secretary of state, certified by the secretary or
33 other proper official of the state under whose laws it is
34 formed, and shall pay the fees prescribed for amendments by
35 section 490.122.

1 ~~4. Foreign corporations~~ A foreign corporation shall also
2 file statements and pay fees otherwise prescribed by section
3 490.122.

4 5. The secretary of state shall provide for the disposition
5 of an overpayment of fees in the same manner provided in
6 section 490.122.

7 DIVISION VIII

8 CLOSED COOPERATIVES

9 Sec. 38. Section 501.101, Code 2017, is amended by adding
10 the following new subsection:

11 NEW SUBSECTION. 5A. "*Document*" means information that
12 is inscribed on a tangible medium or that is stored in an
13 electronic or other medium and is retrievable in perceivable
14 form.

15 Sec. 39. Section 501.105, subsection 1, Code 2017, is
16 amended by striking the subsection.

17 Sec. 40. Section 501.105, subsection 3, Code 2017, is
18 amended to read as follows:

19 3. The secretary of state shall collect ~~the following~~ fees
20 for filing documents as follows:

21 a. Twenty dollars upon the filing of original or amended
22 articles or articles of merger.

23 b. Five dollars upon the filing of all other required
24 documents.

25 ~~c. Five dollars per document and fifty cents per page for~~
26 ~~copying and certifying a document.~~

27 Sec. 41. Section 501.105, Code 2017, is amended by adding
28 the following new subsections:

29 NEW SUBSECTION. 3A. Any amount in excess of the correct
30 filing fee shall be returned to the filing party except the
31 secretary of state shall retain up to twenty dollars which
32 shall be considered repayment receipts under section 8.2.

33 NEW SUBSECTION. 3B. The secretary of state shall collect
34 five dollars per document and one dollar per page for copying
35 and certifying a document.

1 NEW SUBSECTION. 7. The secretary of state may adopt rules
2 for the electronic filing of documents and the certification of
3 electronically filed documents.

4 Sec. 42. NEW SECTION. 501.105A Forms.

5 The secretary of state may produce and publish a form for any
6 document required to be filed under this chapter, including as
7 described in section 501.105. The secretary of state may adopt
8 rules requiring the mandatory use of the form.

9

DIVISION IX

10

IOWA COOPERATIVE ASSOCIATIONS

11 Sec. 43. Section 501A.102, Code 2017, is amended by adding
12 the following new subsection:

13 NEW SUBSECTION. 8A. "*Document*" means information that
14 is inscribed on a tangible medium or that is stored in an
15 electronic or other medium and is retrievable in perceivable
16 form.

17 Sec. 44. Section 501A.201, subsection 8, Code 2017, is
18 amended by striking the subsection.

19 Sec. 45. Section 501A.201, Code 2017, is amended by adding
20 the following new subsection:

21 NEW SUBSECTION. 10. The secretary may adopt rules for
22 the electronic filing of documents and the certification of
23 electronically filed documents.

24 Sec. 46. NEW SECTION. 501A.201A Forms.

25 The secretary may produce and publish a form for any document
26 required to be filed under this chapter, including as described
27 in section 501A.201. The secretary may adopt rules requiring
28 the mandatory use of the form.

29 Sec. 47. Section 501A.202, Code 2017, is amended by adding
30 the following new subsection:

31 NEW SUBSECTION. 1A. The secretary shall refuse to file
32 a document that is not prepared using a mandatory form as
33 required pursuant to section 501A.201A.

34 Sec. 48. Section 501A.205, Code 2017, is amended by adding
35 the following new subsection:

1 NEW SUBSECTION. 1A. Any amount in excess of the correct
2 filing fee shall be returned to the filing party except the
3 secretary of state may retain up to twenty dollars which shall
4 be considered repayment receipts under section 8.2.

5 Sec. 49. REPEAL. Section 501A.206, Code 2017, is repealed.

6 DIVISION X

7 NONPROFIT CORPORATIONS

8 Sec. 50. Section 504.111, subsection 8, Code 2017, is
9 amended by striking the subsection.

10 Sec. 51. NEW SECTION. 504.111A Forms.

11 The secretary of state may produce and publish a form for any
12 document required to be filed under this chapter, including as
13 described in section 504.111. The secretary of state may adopt
14 rules requiring the mandatory use of the form.

15 Sec. 52. Section 504.113, Code 2017, is amended by adding
16 the following new subsection:

17 NEW SUBSECTION. 1A. Any amount in excess of the correct
18 filing fee shall be returned to the filing party except the
19 secretary of state may retain up to twenty dollars which shall
20 be considered repayment receipts under section 8.2.

21 Sec. 53. Section 504.116, Code 2017, is amended by adding
22 the following new subsection:

23 NEW SUBSECTION. 1A. The secretary shall refuse to file
24 a document that is not prepared using a mandatory form as
25 required pursuant to section 504.111A.

26 Sec. 54. Section 504.832, subsection 1, paragraph a, Code
27 2017, is amended to read as follows:

28 a. That [section 504.202, subsection 2](#), paragraph "d", or
29 section 504.901 or the protection afforded by section 504.833
30 [or 504.836](#), if interposed as a bar to the proceeding by the
31 director, does not preclude liability.

32 Sec. 55. REPEAL. Section 504.112, Code 2017, is repealed.

33 DIVISION XI

34 UNAUTHORIZED RECORD FILING

35 Sec. 56. Section 554.9516, subsection 2, Code 2017, is

1 amended by adding the following new paragraph:

2 NEW PARAGRAPH. *Of.* in the case of an initial financing
3 statement or an amendment, a secured party and a debtor appear
4 to be the same party. The secretary of state may require the
5 person filing the financing statement to furnish reasonable
6 proof that the parties are not the same.

7 Sec. 57. NEW SECTION. **708.7A Unauthorized record filing.**

8 1. A person shall not cause to be communicated to the filing
9 office, as defined in section 554.9102, for filing a record,
10 also defined in that section, if all of the following apply:

11 a. The person is not authorized to file the record under
12 section 554.9509.

13 b. The record is not related to an existing or anticipated
14 transaction that is or will be governed by chapter 554, article
15 9.

16 c. The record is filed with the intent to harass or defraud
17 the person identified as a debtor in the record.

18 2. A person who commits a violation of this section is
19 guilty of the following:

20 a. A simple misdemeanor for a first offense.

21 b. A serious misdemeanor for a second or subsequent offense.

22 **EXPLANATION**

23 The inclusion of this explanation does not constitute agreement with
24 the explanation's substance by the members of the general assembly.

25 **GENERAL.** This bill amends a number of provisions affecting a
26 person who files a document (which may also be referred to as a
27 record) with the office of the secretary of state (office) and
28 who may pay an associated filing fee to the office for deposit
29 in the general fund. The bill provides for documents filed by
30 business entities and persons who are obtaining some degree of
31 status as a creditor in collateral possessed by a debtor as
32 part of a commercial transaction under the uniform commercial
33 code.

34 **BUSINESS ENTITIES FILING DOCUMENTS — BACKGROUND.** The Code
35 regulates business entities operating on a profit, cooperative,

1 or nonprofit basis. Each type of entity is governed by its own
2 Code chapter but generally shares a number of the same document
3 filing requirements and the payment of associated fees. The
4 types of documents that entities file with the office include
5 documents providing for the formation of the entity, including
6 its business affairs, the rights and obligations of its equity
7 holders, and its management; authorization for a foreign entity
8 to transact affairs in this state; recording of facts regarding
9 some extraordinary event in the entity's life such as a merger,
10 consolidation, dissolution, or reinstatement; or amending a
11 document which has been filed. The secretary of state is
12 sometimes authorized to prescribe forms for certain documents,
13 which may be mandatory (for example, see Code section 490.121).

14 BUSINESS ENTITIES FILING DOCUMENTS — FORMS. The bill
15 authorizes the secretary of state to produce and publish a form
16 for any document required to be filed. The secretary of state
17 may adopt rules requiring the mandatory use of the form. The
18 bill does not authorize the secretary of state to produce or
19 publish a form for articles of incorporation filed under the
20 Iowa business corporation Act. The secretary of state must
21 refuse to file a document that is not submitted on the required
22 form. The bill also allows for the electronic delivery and
23 certification of documents.

24 BUSINESS ENTITIES FILING DOCUMENTS — OVERPAYMENT OF
25 ASSOCIATED FEES. The bill provides that any amount in excess
26 of the correct fee required when filing a document must be
27 returned to the filing party except that the secretary of
28 state may retain up to \$20 which shall be treated as repayment
29 receipts under Code section 8.2.

30 BUSINESS ENTITIES — REGISTERED OFFICE MAINTAINED BY A
31 LIMITED PARTNERSHIP. The bill provides that a registered
32 office must be maintained by a foreign as well as a domestic
33 limited partnership (Code section 488.102). It also makes a
34 terminology change from registered agency to registered agent
35 designated to accept service of process (Code section 488.116)

1 on behalf of the limited partnership.

2 BUSINESS ENTITIES FILING DOCUMENTS IN ENGLISH BY LIMITED
3 PARTNERSHIPS. The bill provides that a document filed with the
4 secretary of state by a limited partnership must be in English
5 (Code section 488.206).

6 BUSINESS ENTITIES — CERTIFICATE OF AUTHORIZATION ISSUED
7 TO A LIMITED LIABILITY COMPANY. The bill provides that a
8 certificate of authorization for a foreign limited liability
9 company must set forth that such certification has not been
10 revoked or a notice of cancellation has not been filed (Code
11 section 489.208). It also allows the entity's name to contain
12 the words "professional limited company" or "professional
13 limited liability company" (Code section 489.1103).

14 BUSINESS ENTITIES PAYING FEES FOR COPYING DOCUMENTS FILED
15 BY CLOSED COOPERATIVES. The bill increases the amount charged
16 to obtain a certified copy of a document filed by closed
17 cooperatives from 50 cents to \$1 (Code section 501.105).

18 BUSINESS ENTITIES — STANDARD OF LIABILITY FOR DIRECTORS
19 OF A NONPROFIT CORPORATION. The bill amends a provision that
20 generally shields a director of a nonprofit corporation from
21 liability in a civil action brought by the corporation or a
22 member, including a derivative suit (Code section 504.832).
23 One criteria which bars liability is another statute which
24 protects the director. The bill references a protection
25 statute which allows a director to take advantage of a business
26 opportunity even though it could infringe on the interests of
27 the corporation so long as such opportunity was first offered
28 to the corporation (Code section 504.836).

29 UNAUTHORIZED RECORD FILINGS UNDER THE UNIFORM COMMERCIAL
30 CODE — PARTIES TO A FINANCING STATEMENT MUST BE DIFFERENT.
31 The Code provides for the filing of a number of records with
32 the secretary of state in order to create or maintain a lien
33 (security interest) in favor of a creditor (secured party)
34 in the debtor's collateral which is generally restricted to
35 personal property (Code chapter 554, article 9). A record

1 includes a financing statement that is used to establish the
2 creditor's place of priority among competing creditors to the
3 collateral. The bill provides that the secretary of state is
4 not to file a financing statement if it appears the secured
5 party and debtor are the same person. The secretary may
6 require proof that the parties are different.

7 UNAUTHORIZED RECORD FILINGS UNDER THE UNIFORM COMMERCIAL
8 CODE — CRIMINAL OFFENSE FOR THE WRONGFUL FILING OF A RECORD.
9 The bill prohibits a person from filing a wrongful record to
10 create a security interest. A wrongful filing occurs if a
11 person is not authorized to file the record, the record is not
12 related to an existing or anticipated transaction, and the
13 record is filed with an intent to harass or defraud the person
14 identified in the record.

15 A person who commits a first offense of wrongful filing is
16 guilty of a simple misdemeanor and a person who commits the
17 same offense for a second or subsequent time is guilty of a
18 serious misdemeanor. A simple misdemeanor is punishable by
19 confinement for no more than 30 days or a fine of at least \$65
20 but not more than \$625 or by both. A serious misdemeanor is
21 punishable by confinement for no more than one year and a fine
22 of at least \$315 but not more than \$1,875.